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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/429,723 10/29/99 HOPE

C BAL6019P0011

HM12/0403  
ROCKEY MILNAMOW & KATZ LTD  
TWO PRUDENTIAL PLAZA -SUITE 4700  
180 NORTH STETSON AVENUE  
CHICAGO IL 60601

EXAMINER

GRUNBERG, A

ART UNIT

PAPER NUMBER

1661

DATE MAILED:

04/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.  
**09/429,723**

Applicant(s)  
**Claude Hope et al.**

Examiner  
**Anne Marie Grunberg**

Group Art Unit  
**1661**



☒ Responsive to communication(s) filed on Oct 29, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claim

- ☒ Claim(s) 1-18 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claims 1-18 are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1661

### **DETAILED ACTION**

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1661.

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-11 and 13-18, drawn to a Eustoma plant having reduced apical dominance, classified in class 800, subclass 323, for example.
  - II. Claim 12, drawn to a reduced apical dominance allele, classified in class 536, subclass 23.6, for example.

The inventions are distinct, each from the other because:

Invention I is unrelated to Invention II. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together or they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the inventions have different functions where Group I is drawn to a Eustoma plant whereas Group II is drawn to a reduced apical dominance allele.


An Eustoma having reduced apical dominance does not need to contain the reduced apical dominance allele claimed in claim 12. Reduced apical dominance can be achieved for

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax phone number for this group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

AMG

  
**BRUCE R. CAMPPELL, PH.D**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**

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